IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2843 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KELVANI MANDAL

Versus

DISTRICT EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 2843 of 1994

MR MUKESH R SHAH for Petitioner No. 1

MS MANISHA LAVKUMAR, AGP, for Respondent No. 1

MR PT JASANI for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/12/2002

ORAL JUDGEMENT

What is challenged in this petition under Article 226 of the Constitution is the order dated 4-1-1994 at

Annexure `E' to the petition passed by the District Education Officer, Junagadh directing the petitioner -school management to pay respondent No.2 -teacher arrears of salary for the period between 1st February to 31st December, 1991.

2. Respondent No.2 was employed as a teacher in the school run by the petitioner-management. Respondent No.2 was alleged to be involved in an attempt to rape a girl student, who happened to be the daughter of a staff member of the school. However, the only controversy in the present petition is whether the District Education Officer was justified in directing the school management to pay respondent No.2 arrears of salary for the period between 1st February to 31st December, 1991 during which period respondent No.2 had admittedly not attended the school. Of course, the controversy is whether respondent No.2 had absented himself from duty or whether the school management had prevented respondent No.2 from discharging his duties during the aforesaid period. When this issue was taken to the Gujarat Secondary Education Tribunal in Application No.786 of 1991, by its judgment dated 3-8-1993 the Tribunal directed the DEO to examine this question after hearing the parties. The Tribunal directed that if the DEO comes to the conclusion that respondent No.2 herein was illegally prevented from attending to his duties, then the DEO shall pass an order against the management to pay salary to respondent No.2 herein from the management funds but if the DEO came to the conclusion that respondent No.2 herein was not himself going to the school then it would be open to the school to pass orders for treating the aforesaid period as period of leave without pay.

3. At the first hearing which took place on 6-9-1993, the DEO noted that the representative of the management was absent and passed an order directing the school management to pay respondent No.2 herein arrears of salary for the period from 1st February to 31st December, 1991 on the ground that respondent No.2 was regularly going to the school but the management prevented him from rendering services. The school management, however, made a representation to the DEO that the school management was not aware about the date of hearing which was fixed before the DEO on 6-9-1993. The DEO, therefore, heard the parties again on 24-12-1993. At the said hearing, the management produced various documents in support of its case including the letter dated 1-1-1992 written by respondent No.2 herein to the school employee who was father of the victim girl. In the said letter, respondent No.2 had tendered apology

for the shameful act committed by him. The management also produced another letter dated 1-1-1992 written by respondent No.2 to the Principal of the school wherein respondent No.2 admitted that since the students in the school had seen the incident in question, out of fear respondent No.2 had opted not to go to the school as respondent No.2 did not have the courage of entering the village. Respondent No.2 requested the Principal and another staff member to persuade the father of the victim girl and to bring about a settlement so that respondent No.2 does not lose his job.

After considering the aforesaid documents and after hearing the parties, the DEO came to the conclusion that respondent No.2 himself had not attended the school during the relevant period and, therefore, the DEO cancelled his order dated 6-9-1993 and passed order dated 24-12-1993 holding that respondent No.2 was not entitled to get any salary for the period in question.

4. The grievance of the school management in the present petition is that after the aforesaid order dated 24-12-1993, the DEO again passed order dated 4-1-1994 taking the view that the order dated 6-9-1993 was just and proper and was not required to be reviewed on 24-12-1993. Hence the DEO again directed the school management to pay respondent No.2 salary for the period between 1st February to 31st December, 1991. It is the said order which is challenged by the school management in the present petition.

5. Mr Mukesh R Shah learned counsel for the petitioner has submitted that once the DEO set aside the ex-parte order dated 6-9-1993 and passed the order dated 24-12-1993 after a biparte hearing, there was no cause or occasion for the DEO to review the order dated 24-12-1993 and that no reason has been given in the said order which can conceivably justify reopening the chapter which was already closed by order dated 24-12-1993. Secondly, it is submitted that in any view of the matter, the DEO has erred in passing the order on the ground that the Tribunal has upheld the DEO's order dated 6-9-1993 in Case No.770 of 1993. It is submitted that the Tribunal had disposed of Application No.770 of 1993 on the ground that after the Tribunal rendered the judgment dated 3-8-1993 requiring the Tribunal to look into the matter, the Tribunal had become functus-officio and, therefore, nothing further was required to be done by the Tribunal.

6. None was present for respondent No.2 when the matter was called out on 4-12-2002. Today also, the

matter has been called out twice but the learned advocate for respondent No.2 is not present. Since the matter is pending since 1994, the Court has proceeded to decide the matter on merits.

7. As far as the DEO is concerned, it is represented by Ms Manisha Lavkumar learned AGP who is not in a position to support the impugned order dated 4-1-1994.

8. It is obvious that once the DEO had passed order dated 24-12-1993 after a biparte hearing there was nothing which justified reopening the matter. Reliance placed by the DEO on the order of the Tribunal in Case No.770 of 1993, by proceeding on the basis that the said order had upheld the DEO's order dated 6-9-1993, is absolutely misconceived. While disposing of Application No.770 of 1993 on 30-12-1993, the Tribunal had specifically noted the second order i.e. order dated 24-12-1993 passed by the DEO holding that applicant Laljibhai Ambavi Bhut (respondent No.2 herein) was responsible for not going to the school and, therefore, he was not entitled to the salaries for the relevant period. The Tribunal further observed that if applicant Mr Bhut was aggrieved by the said order of the DEO, he may challenge the order of the DEO before an appropriate forum and that order of DEO being an administrative order was not amenable to the jurisdiction of the Tribunal. The Tribunal thereupon disposed of Application No.770 of 1993 on the ground that after passing the order dated 3-8-1993, the Tribunal had become functus-officio and nothing further was required to be done by the Tribunal in the matter. In spite of such clear findings given by the Tribunal, the DEO has read the said order as if the Tribunal had upheld his order dated 6-9-1993. The impugned order dated 4-1-1994 passed by the DEO is, therefore, nothing but perverse as no reasonable person could have possibly arrived at the conclusion that the Tribunal had upheld the DEO's order dated 6-9-1993.

9. For the reasons aforesaid, the petition is allowed. The impugned order dated 4-1-1994 passed by the District Education Officer, Junagadh is quashed and set aside. It is further declared that the dispute between the parties about the claim of respondent No.2 for salary for the period from 1st February to 31st December, 1991 has been concluded by the DEO's order dated 24-12-1993 at Annexure `C' to the petition.

Rule is made absolute with no order as to costs.

(M.S. Shah,J)
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